LIST OF CHANGES
OCTOBER 2007 PRINTING OF
LEGAL OPINIONS IN BUSINESS TRANSACTIONS (EXCLUDING THE REMEDIES OPINION)

Changes Made to the Report as published in 2005 (the "2005 Report")
With the "October 2007 Printing — as revised" (the "2007 Printing")

Page references are to the 2005 Report except as indicated.
Use of the adjective "existing" references the 2005 Report prior to changes.

(pagination/footnote numbering summary at end)

- ***Page (iii): A Note Regarding 2007 Printing has been added.***

- ***Page 12: As revised, existing Footnote 50 reads in its entirety as follows:***

  See Comm. on Legal Opinions, American Bar Association, *Closing Opinions of Inside Counsel*, 58 Bus. Law. 1127 (2003) [hereinafter *Inside Counsel Report*]; Carolyn Harris, *Personal Liability for In-House Legal Opinions—Is it Worth the Risk*, Bus. Law News, Volume XXII, Issue 2 (2003).

- ***Page 17: The second paragraph of existing Footnote 70 has been moved to a new footnote at the end of the textbox on Page 18 (see below). The first paragraph remains unchanged.***

- ***Page 18: As revised, the textbox reads in its entirety as follows (new Footnote 72 added):***

> Nothing has come to our attention that has caused us to believe that the [disclosure document] contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein [, in the light of the circumstances under which they were made,] not misleading.[72]

- ***Page 18: As revised from the text previously appearing as the second paragraph of existing Footnote 70, new Footnote 72 (see above) reads in its entirety as follows:***

  To avoid any possible misunderstanding as to the scope of "negative assurance," the opinion letter should include statements to the effect that the lawyer is not assuming any responsibility for the contents of the documents mentioned in the prospectus or offering document, except for certain limited portions as expressly stated or specifically identified in the letter, and further state that the lawyer disclaims any opinion with respect to financial statements and other financial or statistical data, in instances when such matters are outside the scope of the negative assurance to be given.

- ***Pages 18-31: Existing Footnotes 72-109 have been renumbered as 73-110, respectively, and cross-references throughout the 2007 Printing adjusted accordingly.***

- ***Page 18: As revised, existing Footnote 73 (renumbered Footnote 74) reads in its entirety as follows:***

  For an illustration of the hazards in providing negative assurance to investors (in this instance, to purchasers of asset-backed securities in a private placement of those securities), *see* Magistrate Judge Joyner's report and recommendation, recommending denial of a prominent opinion giver's motion to dismiss claims under, *inter alia*, Rule 10b-5, common law fraud, and deceit (but granting the opinion giver's motion to dismiss plaintiffs' malpractice claims) in *Pioneer Ins. Co. v. Chase Securities*, 2001 Extra Lexis 425 (N.D. Okla. Dec. 21, 2001). The District Court adopted and affirmed Magistrate Judge Joyner's report and recommendation "in its result." 2002 U.S. Dist. Lexis 7562 (N.D. Okla. 2002). For further background on this litigation, *see In re CFS-Related Securities Fraud Litigation*, 256 F. Supp. 2d 1227 (N.D. Okla. 2003).

- ***Page 20: As revised, existing Footnote 79 (renumbered Footnote 80) reads in its entirety as follows:***

  See Roberts v. Ball, Hunt, Hart, Brown & Baerwitz, 57 Cal. App. 3d 104, 128 Cal. Rptr. 901 (1976). *See also* note 45; Appendix 10 ("Exceptions Subcommittee Report") to the Remedies Report at "Final Admonition"; *TriBar Report* § 1.4(d); *ABA Guidelines* § 1.5; and Part III, Section B of this Report.

- ***Page 25: As revised, the last sentence of existing Footnote 98 (renumbered Footnote 99) reads in its entirety as follows:***

  See "Officers' Certificates" below in this Section IV.D.3 for a general discussion of officers' certificates.

- ***Page 31, "Documentary Examination of Assumptions": As revised, the first sentence reads as follows (new Footnote 111 added)****:*

Opinion givers customarily assume that the signatures on all documents examined are genuine, that copies of documents examined conform to the originals, and that such documents are binding on the other parties.[111]

- ***Page 31, "Documentary Examination of Assumptions": New Footnote 111 (see above) reads in its entirety as follows:***

  The assumption that the "documents are binding on the other parties" covers the legal capacity of individuals to enter into contracts on their own behalf and the authority of the signatories to bind the entities on whose behalf they have signed the contract. *See* text and note at note 85. This assumption relates specifically to any opinion as to enforceability of the documents in question and remedies available in the enforcement of them. The Remedies Report addresses such opinions. *See* text and note at note 13. In the context of a "duly authorized" opinion, the opinion giver may rely on a certificate of the secretary of the corporation with respect to certain matters. *See* text and note at notes 153 and 154.

- ***Page 32-62: Existing Footnotes 110-184 are renumbered as 112-186, respectively, and internal cross-references throughout the 2007 Printing adjusted accordingly.***

- ***Page 35: As revised, existing Footnote 122 (renumbered Footnote 124) reads in its entirety as follows:***

> *See* Section II.F of the *Inside Counsel Report*. *See also Accord* §§ 6-A, 6-B and commentary. *Cf.* Am. Bar Ass'n, *Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information*, 31 Bus. Law. 1709 (1976).

- ***Pages 36-37: As revised, the carryover paragraph reads in its entirety as follows (footnote references renumbered):***

When expressly stating reliance on the opinion of local counsel, the principal opinion giver's sole responsibility is to exercise reasonable care in the selection of local counsel (if, in fact, the principal opinion giver selects such counsel).[130] The opinion giver is not responsible for independently investigating or otherwise verifying the law of the foreign jurisdiction.[131] The principal opinion giver may assume a broader responsibility to examine the statutory and case law of the foreign jurisdiction if the principal opinion giver's opinion letter states that the opinion giver "concurs" with the legal opinions provided in the opinion letter of local counsel or that the local counsel's opinion letter is satisfactory in substance.[132] Accordingly, a principal opinion giver's opinion letter customarily does not do so. The preferred and more recent common practice is for the local counsel's opinion letter to be addressed to the recipient of the principal opinion letter (rather than to the principal opinion giver) and for the principal opinion giver not to render an opinion on that subject.

- ***Page 37: As revised, existing Footnote 130 (renumbered Footnote 132) reads in its entirety as follows:***

> The TriBar Report states that an indication in the principal opinion giver's opinion that local counsel's opinion is satisfactory in "form and substance" or that the opinion giver "concurs" in local counsel's opinion imposes a burden on the principal opinion giver to make an independent investigation of the law involved beyond merely satisfying itself that reliance on the opinion is reasonable, based on the reputation of local counsel for competence in matters of the kind involved. *See TriBar Report* § 5.1 n. 99. The ABA Guidelines state that a "concurrence" opinion should not normally be requested. *See ABA Guidelines* § 2.2. The TriBar Report maintains that there is no broadening of the principal opinion giver's responsibility if an opinion letter merely states that the local counsel's opinion is "satisfactory in form and scope" (as opposed to "in form and *substance*") or that the opinion recipient is "justified" in relying on local counsel's opinion. *TriBar Report* § 5.1 n. 99 and accompanying text. A statement that the opinion recipient is justified in relying on the local lawyer's opinion expresses the principal opinion giver's belief that, based upon the local lawyer's reputation, the local lawyer is qualified to render the opinion. Similarly, a statement that the local counsel's opinion is "satisfactory in form and scope" would be understood not to constitute an opinion as to the substance of the local counsel's opinion. *See TriBar Report* § 5.1 at 637.

- ***Page 41, "Validly Existing / What it means": As revised, the first sentence in Section V.A.2.a reads in its entirety as follows:***

"Validly existing" means that a corporation has not dissolved or ceased to exist. The adverb "validly" means that a corporation is a *de jure* corporation and not merely a *de facto* corporation. The opinion also means that no dissolution proceedings have been initiated.

- ***Pages 45-46: As revised, the carryover paragraph reads in its entirety as follows (footnote references renumbered):***

The "duly authorized" opinion requires a review of the articles and bylaws of the Company and of the California Corporations Code to determine the approvals required and the procedures for obtaining them, including notice provisions for meetings and any restrictions on the use of written consents. The opinion also may involve a review of the minute book to verify that the action has in fact been taken. Opinion givers often alternatively rely on a secretary's certificate certifying the adoption of the relevant resolutions.[152] With that certificate, the opinion giver is entitled to assume (without stating), and rely upon such assumption in rendering the opinion,[153] that the directors approving the action were duly elected and that, in approving the transaction, required procedures (e.g., presence of a quorum and the giving of appropriate notice) were satisfied. Verification of any required shareholder approval involves a review of the Company's compliance with applicable procedures for obtaining such approval, such as the presence of a quorum and the giving of appropriate notice or compliance with applicable shareholder consent procedures. This is also usually accomplished through a secretary's certificate certifying the adoption of the relevant resolutions.

- ***Page 51: As revised, the textbox reads in its entirety as follows (footnote references renumbered):***

> With regard to our opinion in paragraph ___ below concerning defaults under and [material] breaches of any agreement identified in Schedule 1, we have relied solely upon: (i) a list supplied to us by the Company of material agreements to which the Company is a party, or by which it is bound, a copy of which is attached hereto as Schedule 1 (the "Material Agreements"); and (ii) an examination of the Material Agreements in the form provided to us by the Company. We have made no further investigation.[161] With regard to the Material Agreements governed by laws other than those of the State of California, we have assumed that they would be interpreted in accordance with their plain meaning.[162]

- ***Page 51: As revised, the text of existing Footnote 159 (renumbered Footnote 161) following the textbox reads in its entirety as follows:***

The authors of Glazer & FitzGibbon, citing several bar association reports, observe that a "no breach or default" opinion covers covenants that depend for their application on financial computations and that opinion preparers have the responsibility of identifying such covenants in the Material Agreements that might bear on the transaction, but that opinion preparers customarily obtain and base the opinion, without independent verification, on a certificate from an appropriate officer of the Company or the Company's independent accountants that the transaction will not violate the financial covenants and similar provisions specified in the certificate. Glazer & FitzGibbon § 16.3.5.

In this Report as originally published in May 2005, the Committee expressed the view that a "no violation - material agreements" opinion, absent a disclaimer or an explicit assumption of compliance by the Company with financial covenants in Material Agreements, covers the financial covenants of Material

Agreements, but that opinion preparers customarily rely upon a certificate of an appropriate officer of the Company or the Company's independent accountants, without independent verification, regarding compliance with the relevant financial covenants in Material Agreements. After further deliberation by the Committee and consultation with the Opinions Committee of the Business Law Section, the Committee has revised the view that this opinion covers financial covenants in the absence of a disclaimer or explicit assumption of compliance. The Committee believes that opinion recipients do not expect the scope of a "no violation - material agreements" opinion to include compliance with the financial covenants in Material Agreements, because determining whether or not a company is in compliance with financial covenants is beyond the professional competence of lawyers. *See ABA Guidelines* ¶ *1.4*. The Committee notes, however, that not all commentators are in agreement on this point (see, e.g., the discussion of Glazer & Fitzgibbon above in this note). To avoid any ambiguity over the scope of this opinion, some lawyers who do not include financial covenants within the scope of this opinion include a disclaimer in their opinion similar to clause (i) of the textbox included in this note.

- ***Page 56: As revised, the textbox reads in its entirety as follows (footnote references renumbered):***

> We are not rendering any opinion as to any statute, rule, regulation, ordinance, decree or decisional law relating to [_____.][167]
>
> Furthermore, we express no opinion with respect to compliance with any law, rule or regulation that as a matter of customary practice is understood to be covered only when an opinion refers to it expressly. Without limiting the generality of the foregoing[and except as specifically stated herein,] we express no opinion on local or municipal law, antitrust, environmental, land use, securities, tax, pension, employee benefit, margin, insolvency, fraudulent transfer or investment company laws or regulations, nor compliance by the Company's board of directors or shareholders with their fiduciary duties.[168]

- ***Page 62, "Special Note on Absence of Litigation": As revised, the first paragraph under Section V.C.8 reads in its entirety as follows (new Footnote 187 added; other footnote reference renumbered):***

Opinion givers are often asked to confirm the existence or non-existence of pending or threatened litigation against the Company.[187] While many lawyers refer to this as the "no litigation" opinion, it actually is a factual statement as to the state of knowledge of the opinion giver regarding these matters and does not constitute an "opinion." The typical "no litigation" confirmation reads as follows:[188]

- ***Page 62: New Footnote 187 (see above) reads in its entirety as follows:***

This confirmation is sometimes given with a listing of the types of matters covered but more frequently with use of general terms such as "litigation," "action" or "proceeding" or combinations of them. As customarily used in connection with this confirmation, those terms are understood to cover adversarial proceedings, both public and private, before an adjudicatory body with authority to reach a ruling on the questions presented that, subject to normal review procedures, is binding on the parties as a matter of law or pursuant to private

agreement. *See* Glazer & FitzGibbon § 17.2.1. Such confirmation would not normally be understood to cover investigations unless a specific investigation amounts to a "threatened" proceeding. *Id*.

- ***Pages 62-66: Existing Footnotes 185-195 are renumbered as Footnotes 188-198, respectively, and internal cross-references throughout the 2007 Printing adjusted accordingly.***

- ***Page 62: As revised, the textbox in existing Footnote 185 (renumbered Footnote 188) reads in its entirety as follows:***

> We are not representing the Company in any action or proceeding that is pending, or overtly threatened in writing by a potential claimant, that seeks to enjoin the transaction or challenge the validity of the Agreement or the performance by the Company of its obligations thereunder.

- ***Page 62, "Special Note on Absence of Litigation": As revised, the textbox immediately under the first paragraph of V.C.8 reads in its entirety as follows (footnote reference renumbered):***

> To our knowledge, there is no action or proceeding pending or threatened in writing[189] against the Company [except as set forth in {Schedule 2 of this opinion} {Section __ of the Agreement} {the certificate of an officer of the Company}].

- ***Page 62: As revised, existing Footnote 186 (renumbered Footnote 189) reads in its entirety as follows (footnote cross references adjusted as described elsewhere herein):***

Of course, as *Ball Hunt* teaches, such a formulation of the confirmation would be inappropriate if the opinion preparers have knowledge of a threatened claim or legal action that is not in writing but is material to the client. *See* Part III, Section B of this Report, and notes 45 and 264.

- ***Page 62: As revised, the text of existing Footnote 187 (renumbered Footnote 190) reads in its entirety as follows (page 63 of the 2007 Printing)*:**

See Part IV, Section D.4 of this Report for a general discussion of "knowledge" considerations, including the importance, especially in larger firms, of qualifying the knowledge definition to a defined group of lawyers of the opinion giver.

- ***Page 63: As revised, the textbox reads in its entirety as follows (page 64 of the 2007 Printing, first of two textboxes):***

> With regard to our statement in paragraph ___ below concerning any action or proceeding that is pending or threatened in writing, we have made an inquiry of the lawyers within this firm who have represented the Company in this transaction[,][and] relied upon a certificate executed by an officer of the Company covering such matters[, and checked the records of this firm to ascertain that we are not acting as counsel of record for the Company in any such matter].

- ***Page 66: As revised, the first sentence of the first paragraph on the page (the last paragraph of Section IV.D.1) reads as follows (second paragraph on the page, 2007 Printing):***

The Committee notes that a lawyer's opinion on the number of outstanding shares is not a legal opinion.

- ***Page 66: As revised, the paragraph following the textbox in the introduction to analysis of the "Duly Authorized" opinion (Section V.D.2) reads in its entirety as follows (Footnotes 199 and 200 added in 2007 Printing):***

The parts of this opinion are closely interrelated and are addressed in this and in the following two subsections. The "duly authorized" part relates to creation of the shares under the articles and bylaws rather than their issuance.[199] The steps required to approve a particular share issuance are covered by the "validly issued" part of this opinion.[200]

- ***New Footnote 199 (see above) has been moved to this location from the fourth paragraph in Section V.D.2.a, where it appeared at existing page 67 as Footnote 201 (no changes to the text of it).***

- ***The text of the new Footnote 200 (see above) reads in its entirety as follows:***

> There is some potential confusion between the two parts as a particular share issuance (covered by the "validly issued" part) is normally described as having been "authorized" by the board of directors.

- ***Pages 66-67: Existing Footnotes 196-200 are renumbered as Footnotes 201-205, respectively, and internal cross-references throughout the 2007 Printing adjusted accordingly. Existing Footnote 201 has been relocated to new Footnote 199 as noted above.***

- ***Page 66, "What the duly authorized opinion means": As revised, the first paragraph in Section V.D.2.a reads in its entirety as follows (page 67, 2007 Printing):***

The "duly authorized" opinion means that the Company had the corporate power under its articles and bylaws to issue the shares of capital stock as of the time they were issued. As used in a capitalization opinion, this opinion also indicates that the Company had sufficient authorized shares of each class to cover all outstanding shares as of the time of the issuance of the shares.

- ***Pages 67-68: Existing Footnotes 202-207 have been renumbered as Footnotes 206-211, respectively, and cross-references throughout the 2007 Printing adjusted accordingly.***

- ***Page 68, "Duly Authorized / What the opinion does not cover": As revised, the second paragraph in Section V.D.2.c reads in its entirety as follows (footnote references renumbered):***

The "duly authorized" opinion is also generally understood not to address the adequacy of any proxy solicitation or other disclosure document or compliance with the proxy rules of the SEC, since the opinion is understood to relate only to authorization of the issuance of shares as governed by the GCL. However, opinion givers should be mindful of the need to avoid giving misleading opinions.[211]

- ***Page 68, "Duly Authorized / What the opinion does not cover": As revised, the final paragraph in Section V.D.2.c reads in its entirety as follows (carryover to page 69, 2007 Printing; new Footnote 212 added):***

The "duly authorized" opinion does not address issues related to the compliance by the Company's directors with their fiduciary duties. Some California lawyers expressly qualify their "duly authorized" opinions by stating that they do not address compliance with fiduciary duties. That qualification is not necessary because it is customarily understood that compliance with fiduciary duties is not covered by an opinion unless specifically addressed. However, there may be circumstances where a California lawyer may include a statement in the legal opinion expressly stating that it does not address such compliance.[212]

- ***Page 68: New Footnote 212 (see above) reads in its entirety as follows (page 69, 2007 Printing)*:**

> An alternate formulation of this is that "the validly issued opinion rests on an assumption, customarily unstated ..., that fiduciary requirements relating to the issuance have been satisfied." TriBar Report § 6.2.2. See also GLAZER & FITZGIBBON § 10.2.2. Whatever approach is taken, the Committee is of the view that the result is the same: opinion givers customarily do not address compliance with fiduciary duties in a "duly authorized" or "validly issued" opinion.

- ***Pages 68-94: Existing Footnotes 208-289 are renumbered as 213-294, respectively, and cross-references throughout the 2007 Printing adjusted accordingly.***

- ***Pages 68-69, "Validly Issued / What it means": As revised, the carryover paragraph of Section V.D.3.a reads in its entirety as follows (page 69, 2007 Printing; footnote references renumbered):***

Although the GCL provides for the "issuance" of shares, it does not define that term.[213] The "validly issued" opinion confirms that issuance of the shares complied with the requirements set forth in the articles and bylaws (including any preemptive rights contained in the articles) and with the requirements of the GCL (including corporate actions such as board approval and, if necessary, shareholder approval) applicable to the specific share issuance addressed in the opinion. In addition, the opinion confirms that the shares were issued for proper and sufficient consideration. The "validly issued" opinion cannot properly be given if the shares were issued without proper board or shareholder approval, in violation of any shareholders' preemptive rights set forth in the articles, or in excess of the number of authorized shares.[214] While this Report maintains a distinction between the "due authorization" and "validly issued" opinions, an opinion giver should not render a "validly issued" opinion if the opinion giver could not also give the "duly authorized" opinion (or appropriately rely on an assumption or an opinion of other counsel as to due authorization), whether or not requested to do so.

- ***Page 71: As revised, existing Footnote 219 (renumbered Footnote 224) reads in its entirety as follows:***

> *See* Part V, Section D.2.c of this Report. The valid issuance opinion does not, therefore, address whether the issuance of shares violates the shareholders' so-called "quasi-preemptive" rights. For background, see 1 Ballantine & Sterling § 127.03[8][b]; 1 Marsh's California Corporation Law § 7.12.

- ***Pages 81-82: As revised, the carryover paragraph reads in its entirety as follows (all text appears on page 82, 2007 Printing; footnote references renumbered):***

Occasionally, the opinion giver is asked to provide negative assurance regarding the adequacy of disclosure documents furnished to investors by the Company. Although negative assurance is customarily provided to underwriters in registered offerings, requesting negative assurance in an exempt offering is often not appropriate.[260] Requests for negative assurance statements should be limited to registered offerings and other transactions in which an offering document comparable to a statutory prospectus under the 1933 Act is being prepared and delivered and the process for preparing the offering document is comparable to that followed in a registered offering.[261]

- ***Page 87: URL references in existing Footnote 267 (renumbered Footnote 272) have been modified to conform to the presentation shown in existing Footnote 13.***

- ***Page 91: As revised, existing Footnote 277 (renumbered Footnote 282) reads in its entirety as follows (page 91, 2007 Printing):***

> *See* U.C.C. §§ 9-301 to 9-307 and U.C.C. § 1-105(2). The U.C.C. Committee of the Business Law Section, in its 2005 opinions report takes the position that a "Security Interest Opinion" does not include a choice of

law opinion. U.C.C. Committee, State Bar of California, *Legal Opinions in Personal Property Secured Transactions* § 2.4 (2005).

- ***Appendix B: References to page numbers in the text have been adjusted accordingly in the 2007 Printing.***

- ***Appendix B, Page B-2: A reference has been added (immediately below the* Orloff v. Allman *listing) to the Magistrate's Report in* Pioneer Ins. Co. v. Chase Securities *(see revision to existing Footnote 73, renumbered Footnote 74).***

- ***Appendix B, Page B-3: A reference has been added to* Division 8 *at the end of the* Cal. Com. Code *listing.***

- ***Appendix B, Page B-5: A separate reference has been added (immediately below the 1982 Report listing) to the Los Angeles County Bar Association Real Property Section report (*"Legal Opinions in California Real Estate Transactions"*) published jointly with the State Bar of California Real Estate Section.***

- ***Appendix B, Page B-7: A reference has been added (immediately below the article by Carolyn Harris) to the* IPONET SEC No-Action letter (July 23, 1996) *(see existing Footnote 253, renumbered Footnote 258).***

- ***Other style changes have been made to Appendix B to conform to references in the body of the text.***

- ***Appendix C, Page C-4: URL reference in item 53 has been modified to conform to the presentation shown in existing Footnote 13.***

SUMMARY
Impact on Page and Footnote Numbering

Page breaks in the 2007 Printing are identical to those in the 2005 Report for pages 1-61. Page breaks in the 2007 Printing at pages 62-94 vary from the 2005 Report, primarily as a result of the addition of new footnotes.

Footnote numbering described in the specific list of changes (above) are summarized as follows:

2005 Report Footnotes	***2007 Printing Footnotes***
1-71	1-71
	72 (new)
72-109	73-110
	111 (new)
110-184	112-186
	187 (new)
185-195	188-198
201	199
196-200	201-205
	200 (new)
202-207	206-211
	212 (new)
208-289	213-294